UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>03 January 2008</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,2,4-9 and 11-14</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1,2,4-9 and 11-14</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This action is in response to the amendment filed 1/3/2008.

2.   Claims 1,2,4-9 and 11-14 remain pending and have been considered below.

3.   Per Applicant's request, claims 1 and 8 have been amended; claims 3 and 10

have been cancelled.

Response to Arguments

4.   Applicant's arguments with respect to claims 1,2, 4-9, and 11-14 have been

considered but are moot in view of the new ground(s) of rejection.

Examiner's Note

5.   Applicant appears to be attempting to invoke 35 U.S.C. 112 6th paragraph in

claims 1, 2, and 4-7 by using "means-plus-function" language. However, Examiner

notes that the only "means" for performing these cited functions in the specification

appears to be software. Since no other specific structural limitations are disclosed in

the specification, the claims have not invoked 35 U.S.C. 112 6th paragraph.

Claim Rejections - 35 USC § 101

6.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

   Claims 1, 2, 4-7 are rejected under 35 U.S.C. 101 because the claimed invention

is directed to non-statutory subject matter.

Regarding claim 1 recite a system but it appears reasonable to interpret this system by one of ordinary skill in the art as software per se. Application's specification provides no explicit and deliberate definition of the components such as "software selection means", "function identification means", "polling means", and "data repository means", that make up the system other than they could be software components, which are directed to functional descriptive material, per se, and are therefore, non-statutory subject matter. Claims 2, 4-7 directly or indirectly depend on claim 1, and therefore, suffer the same deficiency.

Applicant is suggested to amend claim one to include in the system at least one processor or memory.

Claim Rejections - 35 USC § 102

7.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8.   Claims 1, 2, 5-9, and 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Harrison (United States Patent No.: US 6,901,582).

As per claims 1 and 8:

Harrison teaches:

*Software application selection means, responsive to user input, for
identifying a software application, equipped with a Reporting Application
Interface, that is executing on said processor* (see at least Fig. 1a-1e; also Fig.
3);

*Function identification means for automatically determining which function
is presently executing in said identified software application* (see at least Fig. 1a-
1e; also see at least col. 6, lines 21-25 "The visual map 120 comprises a
snapshot high-level overview of on-screen graphics representing major
application components (i.e. functions) and groups of application components of
the application being monitored");

*Polling means for bypassing said Reporting Application Interface and
periodically polling said presently executing function in said identified software
application to retrieve statistics data indicative of operation of said presently
executing function in said identified software application* (see at least col. 10,
lines 65-67 "According to an embodiment, the monitoring system 220 periodically
issues an SQL statement requesting data from DBMS 300 representing
performance statistics of the DBMS 300, stored in the database files 335"; also
see col. 19, lines 1-7 "the monitoring system 220 may also employ software
modules designed to extract some or all of the performance statistics without
accessing or calling the API. By avoiding a call to the API, the software modules
extracts the performance statistics without adding significant program loads to

the application, thereby advantageously allowing for more frequent polling, more

precise polling, or both") and

> *Data repository means for storing data indicative of an identity of said*

presently executing function and said retrieved statistics data in a memory (see

at least Fig. 1a-1e and Fig. 3; also see col. 11, line 1 "performance statistics of

the DBMS 300, stored in the database files 335").

<u>As per claims 2 and 9:</u>

Harrison further teaches:

> *Means, responsive to user data input, for setting a polling interval for said*

polling means (see at least col. 18, lines 47-50 "...executing the monitoring

system 220 for a predetermined time interval, and then setting the thresholds 620

as percentage increase or decreases from the performance statistics measured

during the time intervals...may be customizable by direct user interaction").

<u>As per claims 5 and 12:</u>

Harrison further teaches:

> *Means for monitoring all the functions embodied in the software*

application (see at least Figs 1a-1e and 3).

<u>As per claims 6 and 13:</u>

Harrison further teaches:

> *Means for storing statistics data from all of the functions presently*
>
> *executing within said software applications* (see at least Fig. 3; also see col. 11,
>
> line 1 "data from DBMS 300 representing performance statistics of the DBMS
>
> 300, stored in the database files 335").

As per claims 7 and 14:

Harrison further teaches:

> *Means for storing said data indicative of an identity of said presently*
>
> *executing function and said retrieved statistics data individually in the data*
>
> *repository to thereby enable the separate analysis of the statistics data* (see at
>
> least Fig. 1a-1e and Fig. 3; also see col. 11, line 1 "performance statistics of the
>
> DBMS 300, stored in the database files 335").

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

10.   Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Harrison (United States Patent No.: US 6,901,582), in view of Wilson et al. (United

States Patent No.: US 6,714,976).

<u>As per claims 4 and 11:</u>

Harrison does not explicitly teach:

Means for retrieving statistics data directly from the process call stack of said identified software application.

However, Wilson teaches:

Means for retrieving statistics data directly from the process call stack of said identified software application (see at least col. 5, lines 52-54 "because each agent is coupled into the client communication stack, it can monitor the loop back data that passes only through the communication stack").

Therefore, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Harrison's approach to include a communication stack (i.e. call stack) as taught by Wilson. One would have been motivated to modify because the communication stack provides information regarding to all the active components (i.e. functions) of the software application being monitored and also the loop back data that passes only through the communication stack to the monitoring system.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip H. Nguyen whose telephone number is (571) 270-1070. The examiner can normally be reached on Monday - Thursday 10:00 AM - 3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN
2/23/2008

/MARY STEELMAN/

for /Mary Steelman/, Primary Examiner of Art Unit 2191